PENINSULAR LAND DEVELOPMENT SDN. BHD. v. K. AHMAD (No. 2)

[F.C. (Azmi L.P., Suffian & Gill F.JJ.) February 9, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. X.47 of 1969]

Practice and Procedure — Privy Council — Appeal to — Final judgment in civil matter where matter in dispute or value of property involved exceeds $5,000 — Whether order empowering plaintiff to sign judgment on a specially indorsed writ is a final judgment — Application for leave to appeal to Yang di-Pertuan Agong — No discretion.

The respondent had obtained an order empowering him to sign judgment against the appellants on a specially indorsed writ relating to an agreement for sale of land. The appellants had appealed to the Federal Court and the appeal had been dismissed ([1970] 1 M.L.J. 149). The appellants sought leave to appeal to the Yang di-Pertuan Agong. It was argued for the respondent that (a) the judgment in this case was not a final judgment, (b) the case was not from its nature a fit one for appeal.

Held, allowing the application: (1) the order of the court giving leave to the respondent in this case to sign final judgment on the specially indorsed writ was a final judgment;

(2) once it is held that a judgment of the lower court is a final judgment or order in any civil matter and the matter in dispute in the appeal amounts to or is of the value of $5,000 or upwards, or the appeal involves directly or indirectly some claim or question to or respecting property or some civil right of like amount or value, the Federal Court has no alternative but to give leave to appeal.

Cases referred to:-

(1) *Standard Discount Co.* v. *Otard de le Grange* (1877) L.R. 3 C.P.D. 67.

(2) *Salaman* v. *Warner & Ors.* [1891] 1 Q.B. 734, 735, 736.

(3) *Jones* v. *Insole* (1891) 64 L.T.R. 703.

(4) *Charles Bright* v. *Riverplate Construction* (1901) 17 L.T.R. 708.

(5) *Hunt* v. *Allied Bakeries Ltd.* [1956] 3 All E.R. 513.

(6) *Re Page, Hill* v. *Fladgate* [1910] 1 Ch. 489, 494.

(7) *Bozson* v. *Altrincham Urban District Council* [1903] 1 K.B. 547.

(8) *Ratnam* v. *Cumarasamy & Anor.* [1962] M.L.J. 330.

(9) *Lopes* v. *Valliappa Chettiar* [1968] 1 M.L.J. 224, 227.

(10) *Sun Life Assurance Co. of Canada* v. *Jervis* [1944] A.C. 111.

FEDERAL COURT.

R. C. Hoffman for the applicants.

P. Mooney for the respondent.

Cur. Adv. Vult.

Azmi L.P.: The appellants' appeal against the judgment of the High Court at Penang was dismissed by this court and they now ask for leave to appeal further to the Yang di-Pertuan Agong, on the basis that that judgment was a final one. The respondent opposed this application on several grounds.

The first ground is that the judgment of this court was not a final judgment. The authorities on this question appear to be conflicting.

In *Standard Discount Co.* v. *Otard de la Grange*[1] the Court of Appeal held the view that an order empowering a plaintiff to sign judgment upon a specially indorsed writ is interlocutory and not a final proceeding on the ground that it does not become effectual against the defendant until it has been perfected by the further step of signing the judgment; and therefore an appeal upon an order of this kind made by one of the divisions of the High Court of Justice must be brought before the expiration of twenty-one days.

But Brett L.J. a member of the Court of Appeal gave another ground for saying that the order of the lower court was interlocutory. At page 71 he explains it this way:

"I think that our decision may perhaps be founded upon another ground, namely, that no order, judgment, or other proceeding can be final which does not at once affect the status of the parties, for whichever side the decision may be given; so that if it is given for the plaintiff it is conclusive against the defendant, and if it is given for the defendant, it is conclusive against the plaintiff; whereas if the application for leave to enter final judgment had failed, the matter in dispute would not have been determined. If leave to defend had been given, the action would have been carried on with the ordinary incidents of pleading and trial, and the matter would have been left in doubt until judgment. I cannot help thinking that no order in an action will be found to be final unless a decision upon the application out of which it arises, but given in favour of the other party to the action, would have determined the matter in dispute."

Fourteen years later, Brett L.J., who had become Lord Esher and Master of the Rolls, was still of the same view and said so in *Salaman* v. *Warner & Others.*[2] In that case the question was whether an order dismissing an action upon the hearing of a point of law raised by the pleadings before the trial under O. XXV rules 2 & 3 is a final order or within O. LVIII r. 3. His Lordship expressed his opinion in these words:

"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. That is the rule which I suggested in the case of *Standard Discount Co.* v. *Le Grange* and which on the whole I think to be the best rule for determining these questions; the rule which will be most easily understood and involves the fewest difficulties. As an example of the difficulties produced by the opposite view, take the case where an order is made staying or dismissing an action as frivolous and vexatious; if that is a final order, the period during which an appeal may be brought is a year."

Fry L.J. at page 736 says this:

"I think that the true definition is this. I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is 'interlocutory' where it cannot be affirmed that in either event the action will be determined. Applying this test to the present case, it is obvious that the order here was made on an application of which the result would not in one event be final. Therefore this is an interlocutory order."

Lopez L.J. is of the same view because he says:

"I think the definition suggested by the Master of the Rolls in the case that has been referred to is the right definition for this purpose. I think that a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties."

This view was followed by many cases for example see *Jones* v. *Insole*,[3] *Charles Bright* v. *Riverplate Construction*[4] and *Hunt* v. *Allied Bakeries Ltd.*[5]

In *Re Page, Hill* v. *Fladgate*[6] it was held by the Court of Appeal that an order dismissing an action as frivolous and vexatious is for the purpose of appealing an interlocutory order. The appeal was by the plaintiff from an order of Eve J. made upon two motions by the defendants under Order XXV. r. 4, that the statement of claim should be struck out and that the action dismissed as against all the defendants as being frivolous and vexatious. The respondents, the defendants took the objection that the appeal was out of time. The appeal was admittedly out of time if the order appealed from was an interlocutory order within the meaning of Order LVIII r. 15, but was not out of time if it was a final order.

The Court of Appeal held that the order dismissing the action as frivolous and vexatious was for the purposes of appeal, an interlocutory order, but it is interesting to note what Buckley L.J. a member of the court has to say. He started off by saying that the rules were so expressed and the decision was so conflicting that he was unable to arrive at any conclusion satisfactory to his mind as to whether this was an interlocutory order or final order. He went on to say:

"It is plain that many orders which *prima facie* are final are not final but are interlocutory for the purposes of appeal, such, for instance, as orders made in favour of creditors or claimants in the administration action finally determining their rights. The reason, as I understand it, is that although their rights are finally determined it remains to work out the administration of the fund in order to give effect to those rights. There are many cases in which orders have been held to be interlocutory because something remains to be done to give effect to them, although in one sense they are final orders. This, however, is an order in favour of the defendants and it brings this section altogether to an end. To my mind it would be reasonable to say that that is a final order. But I do not think I am entitled to found myself on that, because there have been many decisions in which orders apparently final have been treated as interlocutory. The Master of the Rolls has referred to one or two of them. I could perhaps distinguish them if I set myself to work to do so, but practically the substance of the matter is this. It does not matter very much whether an order of this kind is held to be interlocutory or final so long as the court decides the matter one way or the other so that suitors know what their rights are. I am not prepared to differ from the view taken by the other members of the court. I yield my judgment to theirs without saying that I am completely satisfied with the reasons given for the view that this is an interlocutory order. A decision to that effect is certainly the more desirable, because if the order is reversed the action will have to go on and if it is to go on it ought to go on at once. I therefore concur with the other members of the court. But I desire to say that in my opinion it is essential that the proper authority should lay down plain rules as to what are interlocutory orders, for as matters now stand it is the fact that it is impossible for the suitor in many cases to know whether an order is interlocutory or final."

In *Bozson* v. *Altrincham Urban District Council*[7] Lord Alverstone C.J. laid down the test as follows:-

"It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the right of the parties? If it does, then I think it ought to be treated as a final order; but if it does not, it is then, in my opinion, an interlocutory order."

There would appear to be therefore, a difference of opinion on this question which may be put again this way. The first view is that an order is interlocutory unless it is made on an application of such a character that whatever order had been made thereon must finally have disposed of the matter in dispute. The other test as expressed by Lord Alverstone C.J. is to look at the order made. If it had disposed of the rights of the parties then it is final. In *Ratnam* v. *Cumarasamy & Anor.*[8] the Malayan Court of Appeal in considering the question whether an order refusing extension of time to file a record of appeal is final or not for the purposes of appeal under section 31(1) of the Appeals from the Supreme Court Ordinance 1958, applied the test enunciated by Lord Alverstone in *Bozson* v. *Altrincham, supra,* and held that such an order is a final order of the Court of Appeal. Their Lordships of the Privy Council in *Lopez* v. *Valliappa Chettiar,*[9] in a passage which I will quote later expressed the view that *Ratnam* v. *Cumarasamy, supra,* was decided on the right basis. With deepest respect I would apply the same test in the present case and for that reason would say that the judgment of the Federal Court was a final judgment.

I would now proceed to the next objection. It was urged firstly that the value of the matter in this case does not exceed $5,000. I am afraid I am unable to agree with this view because in my opinion the value of the subject matter would be that of the land and the house which certainly exceeds that amount.

It was also argued on behalf of the respondent that this case is not from its nature a fit one for appeal within the meaning of section 74(1)(a)(iii) and gave several grounds. In my view, however, in view of the judgment of the Privy Council in *Lopes* v. *Valliappa Chettiar, supra,* once we hold that a judgment of the lower court is a final judgment or order in any civil matter and that (1) the matter in dispute in the appeal amounts to or is of the value of $5,000 upwards or (2) the appeal involves directly or indirectly some claim or question to or respecting property or some civil rights of like amount or value, we have no alternative but to give leave. At page 227 in the *Lopes* case, their Lordships for the benefit of this court had given the following directions:

"As the question raised on this application for leave may arise on other applications before the Federal Court, their Lordships think that it is desirable that they should express their views upon it. In their opinion *Ratnam* v. *Cumarasamy* was decided on the right basis and an appeal lies as of right in cases which come within (a) (i) and (ii), provided of course that the appellant complies with any order that the court may make under section 75 or in relation to security. It appears to the Board that the Federal Court only has discretion to refuse leave to appeal in cases which come within (a) (iii) and (b)."

In the circumstances therefore, I consider that this ground must fail and therefore the appellants' application for conditional leave to appeal to His Majesty must be allowed.

It was also urged on behalf of the respondent that in view of the facts of the case we make an order that the appellants should pay the costs of the appeal before the Privy Council whatever the result of the appeal would be. In my view, we should not do this even if we could at all. The matter should in my opinion be left to the discretion of their Lordships of the Privy Council.

Suffian F.J. concurred.

Gill FJ.: I am also of the opinion that in view of what their Lordships of the Privy Council said in *Lopes* v. *Valliappa Chettiar*[1] this court has no option but to allow this application for leave to appeal to the Yang di-Pertuan Agong, because, for the reasons stated by the learned Lord President in his judgment which has just been read, the judgment of the High Court from which this appeal arose was clearly a final judgment in that it finally disposed of the rights between the parties under an agreement for the sale of land, the subject matter in dispute, the value of which is admittedly more than $5,000.

As to the question argued by Mr. Mooney on behalf of the respondent, on the authority of *Sun Life Assurance Co. of Canada* v. *Jervis*,[2] as regards the futility of the proposed appeal to the Yang di-Pertuan Agong, it is not for this court to make any pronouncement thereon.

Application allowed.

Solicitors: *Allen & Gledhill; Skrine & Co.*

MAHESAN v. PUBLIC PROSECUTOR

[F.C. (Ong C.J. (Malaya), Ali F.J. & Ong Hock Sim J.) February 11, 1970]

[Kuala Lumpur — Federal Court Criminal Appeal No. X. 29 of 1969]

Bribery and Corruption — Accepting gratification as reward for services rendered — Prima facie case of commission of offences shown at close of prosecution — Not rebutted by defence — Whether society of which accused was secretary is a public body — Production of police statement of accused objected to and wrongly upheld — Evidence of pecuniary resources disproportionate to accused's known source of income — No miscarriage of justice — Sentence — Prevention of Corruption Act, 1961, ss. 4 (a), 14, 15 & 16.

This was an appeal against the conviction of the appellant by Raja Azlan Shah J. on two charges of corruption under section 4 (a) of the Prevention of Corruption Act, 1961. At the appeal it was argued that the learned trial judge (1) was wrong in holding that the Malaysian Government Officers' Co-operative Housing Society Ltd. was a "public body"; (2) failed to direct himself on the need of corroboration; (3) erred in applying section 17 of the Act as regards the evidence of pecuniary resources or property disproportionate to the accused person's known sources of income in the absence of any direct evidence of gratification; (4) erred in excluding a statement made by the appellant to the police.

Held, dismissing the appeal: (1) on the facts of the case, a *prima facie* case was established at the end of the prosecution case, even without regard to the aid of the presumption under section 14 or the corroborative evidence of resources admissible under section 17 of the Act and this had not been rebutted by the defence;

(2) although the learned trial judge was wrong (a) in holding that the society was a public body and (b) in excluding the statement made by the appellant to the police, no miscarriage of justice was occasioned thereby.

[Editorial Note: As we go to press we understand that the appellant's application for leave to appeal to the Privy Council was dismissed by the Board on May 13, 1970.]

Case referred to:-

(1) *R.* v. *Oster-Ritter* (1948) 32 Cr. App. R. 191.

FEDERAL COURT.

Sir Dingle Foot, Q.C. (*M. Shankar* with him) for the appellant.

Ajaib Singh (Senior Federal Counsel) (*Hashim bin Majid*, Deputy Public Prosecutor, with him) for the respondent.

Cur. Adv. Vult.

Ong C.J.: On September 6, 1969 the appellant was convicted in the High Court at Kuala Lumpur on two charges of corruption under section 4(a) of the Prevention of Corruption Act 1961 and sentenced to a term of seven years' imprisonment, concurrent, on each charge; by way of additional penalty he was ordered to pay to the Malaysian Government Officers' Co-operative Housing Society Limited the sum of $122,000 being the total of the gratification received by him in respect of those charges. He has appealed against the conviction and sentence.

In effect the charges were that, on May 13, 1965 and June 29, 1965, he corruptly accepted gratification in cash payments of $82,000 and $40,000 respectively from one S.M. Manickam as his reward for services rendered in connection with the purchase of certain land at Sungei Dua, Penang, by the Malaysian Government Officers' Co-operative Housing Society Limited, of which he was the secretary and agent.

The essence of the prosecution case was that in June 1964, having viewed the land in the company of Manickam and the option-holder, Rengasamy, the appellant made a secret pact with Manickam for the latter to purchase the land at $8,000 per acre and resell it to the housing society at double the price.

To start with, two cardinal facts were conclusively established, that Manickam purchased the land for $456,000 on November 6, 1964 and that on January 15, 1965 he entered into an agreement with the Housing Society to resell it for $944,000, which was at the price he offered. The most surprising feature of the deal, in this country or anywhere else in the world, was that the first offer was treated as non-negotiable, although there was not the ghost of a suggestion that any counter-offer would be at the risk of another standing offer being accepted. In a word, the gravamen of the charges was simply that the appellant, knowing of the price paid by Manickam, or knowing that it would be readily ascertained, for his own profit, refrained from disclosing the information in his possession to the board as he was in duty bound to do. This was the one and only vital question of fact which was decisive, as the appellant fully appreciated, of his guilt or innocence. As he declared in his statement from the dock:-

"I emphatically deny that I ever knew Manickam had purchased this piece of land at $8,000 per acre, nor was I told in Penang when I went to see it. Had I known that Manickam had purchased this land at $8,000 I would have felt it was my duty to inform the board."

In our view, therefore, once this salient issue of fact was proved by the prosecution to the entire satisfaction of the learned trial judge, the conclusion to be drawn was inevitable. The appellant's deliberate silence showed that he had earned his reward and the